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Woodard, Emhardt, Moriarty, McNett & Henry LLP
Bank One Center/Tower
Suite 3700
111 Monument Circle
Indianapolis, IN 46204-5137

EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,829

Applicant(s)

STANSBURY, MARK A.

Examiner

Naschica, S Morrison

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/24/03 & 2/13/04.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-12,15,17-22 and 26-39 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1,4-12,15,17-22 and 26-39 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/24/03 & 2/13/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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DETAILED ACTION

This is the first Office Action for serial number 10/669,829, Furnace Mount and Method of Installation, filed on September 24, 2003. Claims 1, 4-12, 15, 17-22, and 26-39 are pending.

Claim Objections

Claim 1 is objected to because of the following informalities: on line 8, "extending" should be --extends--. Appropriate correction is required.

Claim 21 is objected to because of the following informalities: on line 5, "comprising" should be --comprises--. Appropriate correction is required.

Claim 28 is objected to because of the following informalities: on line 1, delete "that" after "members". Appropriate correction is required.

Claim 30 is objected to because of the following informalities: on lines 1 and 2, "having" should be --has--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Claim 4 recites the adherent component being located on the upstanding wall member however claim 1 is only directed to the embodiment of Figs. 5-10 which does not disclose this feature.

Claim 35 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 35 recites, "wherein the mount can withstand the static loads associated with supporting a furnace", however this limitation was not described or taught by the original specification of parent application 09/941,524 and is therefore considered to be new matter.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4-12, 15, 17-20, 26-28, and 30-39 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent No. D465,022 to Stansbury in view of U.S. Patent 4,842,095 to Rozek. Regarding claims 1, 4-12, 26-28, 32-34, 36, and 37, D465,022 discloses all of the limitations of the claims but does not teach the pad-like component on top of the main body member being adherent and including an adhesive surface. Rozek teaches a mount comprising a main body member (24) and an adherent component (23, 26), wherein the adherent component (23, 26) includes a vibration dampening material (23) having an adhesive layer/outer surface (26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton by substituting an adhesive layer attached to the upper surface of the adherent component (34), as taught by Rozek, for the coupling means of Benton since adhesives, nails, screws, etc. are equivalent for their use in the fastening art and the selection of any of these known equivalents to secure the mount to an object would be within the level of ordinary skill in the art. Regarding claim 15, 17, 18, and 20, D465,022 does not teach the mount being substantially rigid; however It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the mount of a rigid material because one would have been motivated to provide a strong, unyielding mount to protect the supported object from unnecessary movement. Regarding claims 19, 30, 31, 38, and 39, D456,022 does not expressly teach the main body member being at least 2 inches or the first length being greater than or equal to the second length of Stansbury; however, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to have modified the first vertical length to be at least 2 inches or to have modified the first and second lengths of Stansbury such that the first length is greater than or equal to the second length since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Regarding claim 35, D465,022 does not teach the mount being formed of polymeric material; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the mount of Stansbury of a polymeric material, such as plastic, because one would have been motivated to reduce manufacturing costs and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 21, 22 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Patent D465,022 to Stansbury in view of Rozek and further in view of U.S. Patent 5,799,590 to Noguchi. D465,022 in view of Rozek discloses the mounting block as applied above, but does not teach the furnace mounts in combination with a furnace. However, Noguchi discloses a combination (Fig. 14) comprising a furnace (218) having outer walls that define four corners and a plurality of mounts (226) located at each corner. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have located a mounting block of Stansbury at each corner of the furnace of Noguchi

because one would have been motivated to provide a means for supporting a furnace above the floor as inherently taught by Noguchi.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-12, 30, 31, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,721,275 to Benton et al. (Benton) in view of U.S. Patent 1,887,283 to Brabson in view of U.S. Patent 1,230,836 to Ballenberg, and further in view of U.S. Patent 4,842,095 to Rozek. With regards to claims 1, 4 (as best understood), and 5-12, Benton discloses a mount comprising: a substantially rigid main body member (18 generally) having a first vertical length, a first surface (at 14) adapted to engage a floor and parallel to and spaced from a second surface (36), and an integral locating portion having a second vertical length and including an upstanding member (16) extending perpendicular to the second surface (36); an adherent component (34) parallel and connected to the second surface (36) and located on the upstanding member (16); wherein the adherent component (34) includes a vibration dampening pad defined by an elastomeric, cork material (col. 2, line 7); and wherein the mount includes a means (42) for engaging and coupling the main body member (18 generally) to an object (12). Benton fails to teach the locating portion including two upstanding

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members. Brabson discloses a mount comprising a main body member (20) having a locating portion comprising two upstanding members (21) that are perpendicular to the main body member and each other. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the main body member of Benton to include a second upstanding member perpendicular to the first upstanding member (16) because one would have been motivated to provide a means for a means for firmly holding the supported object against movement as taught by Brabson (pg. 2, lines 12-17). Benton also fails to teach the locator portion extending laterally beyond the main body member (18). Ballenberg teaches a mount (Fig. 1) comprising a main body member (b17) and an upstanding locator portion (b12) wherein the locator portion (b12) extends laterally (at b10) beyond the main body member (see Fig. 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the locator portion of Benton to extend laterally beyond the main body member because one would have been motivated to reduce the amount of support surface abutting the floor in order to enhance slidability of the supported object as taught by Ballenberg. Benton further fails to disclose the coupling means being an adhesive surface included with the adherent component (34). Rozek teaches a mount comprising a main body member (24) and an adherent component (23, 26), wherein the adherent component (23, 26) includes a vibration dampening material (23) having an adhesive layer/outer surface (26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton by substituting an adhesive layer attached to the upper surface of the adherent component

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(34), as taught by Rozek, for the coupling means of Benton since adhesives, nails, screws, etc. are equivalent for their use in the fastening art and the selection of any of these known equivalents to secure the mount to an object would be within the level of ordinary skill in the art.

Regarding claims 30 and 31, Benton also fails to teach the first vertical length being greater than the second vertical length. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second lengths of Benton such that the first length is greater than or equal to the second length since it has been held that the optimization of proportions in a prior art device is a design consideration within the skill of the art. In re Reese, 290 F.2d 839, 129 USPQ 402 (CCPA 1961). Regarding claim 35, Benton does not teach the mount being formed of polymeric material; however it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the mount of Benton of a polymeric material, such as plastic, because one would have been motivated to reduce manufacturing costs and further since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 15, 17-20 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benton in view of Rozek and further in view of Brabson. With regards to claims 15, 17-20 and 28, Benton discloses a mount comprising: a substantially rigid main body member (18 generally) having a first vertical length, a first surface (at 14) adapted to engage a floor and parallel to and spaced from a second

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surface (36), and an integral locating portion having a second vertical length and including an upstanding member (16) extending perpendicular to the second surface (36); an adherent component (34) parallel and connected to the second surface (36) and located on the upstanding member (16); wherein the adherent component (34) includes a vibration dampening pad defined by an elastomeric, cork material (col. 2, line 7); and wherein the mount includes a means (42) for engaging and coupling the main body member (18 generally) to an object (12). Benton does not disclose the coupling means being an adhesive surface included with the adherent component (34). Rozek teaches the mount as applied above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton by substituting an adhesive layer attached to the upper surface of the adherent component (34), as taught by Rozek, for the coupling means (42) since adhesives, nails, screws, etc. are equivalent for their use in the fastening art and the selection of any of these known equivalents to secure the mount to an object would be within the level of ordinary skill in the art. Benton also fails to teach the locating portion including two upstanding members. Brabson discloses the mount as applied above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the main body member of Benton to include a second upstanding member perpendicular to the first upstanding member (16) because one would have been motivated to provide a means for a means for firmly holding the supported object against movement as taught by Brabson (pg. 2, lines 12-17). Benton also fails to teach the first vertical length being greater than the second vertical length. However, it would

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have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second lengths of Benton such that the first length is greater than the second length since it has been held that the optimization of proportions in a prior art device is a design consideration within the skill of the art. In re Reese, 290 F.2d 839, 129 USPQ 402 (CCPA 1961). Regarding claim 19, Benton does not expressly teach the first vertical length being at least 2 inches. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first vertical length to be at least 2 inches since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Claims 21, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,799,590 to Noguchi in view of Benton in view of Rozek and further in view of 5,557,824 to Bushey. Noguchi discloses a combination (Fig. 14) comprising a furnace (218) having outer walls that define four corners and a plurality of mounts (226) located at each corner. Noguchi does not teach the mounts abutting outer walls of the furnace. Benton discloses a mount comprising: a substantially rigid main body member (18 generally) having a first surface (at 14) adapted to engage a floor and parallel to and spaced from a second surface (36), and an integral locating portion extending from the second surface (36); an adherent component (34) parallel and connected to the second surface (36) and located on the upstanding member (16); wherein the adherent component (34) includes a vibration dampening pad defined by an elastomeric, cork material (col. 2, line 7); and wherein the mount includes a means (42) for engaging and

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coupling the main body member (18 generally) to an object (12). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Noguchi by substituting the mounts of Benton for the mounts of Noguchi because one would have been motivated to provide a stable leveling device that is simple, easy to use, and economical in cost to manufacture as taught by Benton (col. 1, lines 29-32). Noguchi in view of Benton does not disclose the coupling means being an adhesive surface included with the adherent component (34). Rozek teaches the mount as applied above. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton by substituting an adhesive layer attached to the upper surface of the adherent component (34), as taught by Rozek, for the coupling means (42) since adhesives, nails, screws, etc. are equivalent for their use in the fastening art and the selection of any of these known equivalents to secure the mount to an object would be within the level of ordinary skill in the art. Noguchi in view of Benton in view of Rozek does not disclose the mount of Benton having a triangular shape. Bushey teaches a mount (30) having a generally right triangle shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton to be of various shapes including triangular as an alternative shape for a mount as taught by Bushey and further since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 26, 27, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benton in view of Brabson in view of Ballenberg in view of Rozek and further in view of Bushey. Benton in view of Brabson in view of Ballenberg in view of Rozek discloses the mount as applied to claims 1, 4-12, 30, 31, 34 and 35 above, but does not teach the mount of Benton having a triangular shape. Bushey teaches a mount (30) having a generally right triangle shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton to be of various shapes including triangular as an alternative shape for a mount as taught by Bushey and further since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Claims 36-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benton in view of Rozek in view of Brabson and further in view of Bushey. Benton in view of Rozek in view of Brabson discloses the mount as applied to claims 15, 17-20 and 28 above, but does not teach the mount of Benton having a triangular shape. Bushey teaches a mount (30) having a generally right triangle shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the mount of Benton to be of various shapes including triangular as an alternative shape for a mount as taught by Bushey and further since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Regarding claims 38 and 39, Benton also fails to teach the first vertical length being equal to or greater

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than the second vertical length. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second lengths of Benton such that the first length is equal to or greater than the second length since it has been held that the optimization of proportions in a prior art device is a design consideration within the skill of the art. In re Reese, 290 F.2d 839, 129 USPQ 402 (CCPA 1961).

Response to Arguments

Applicant's arguments with respect to claims 1, 4-12, 15, 17-22, and 26-39 have been considered but are moot in view of the new ground(s) of rejection.

Additionally, in response to applicant's statement regarding the interview held on 2/11/04, examiner respectfully disagrees with applicant's statement that there was an indication that the proposed amendments seemed to patentably distinguish from the art in the file. Examiner acknowledges the indication that the proposed amendments seemed to distinguish from the references discussed during the interview, specifically Benton '275 and Apparius '329.

Response to Amendment

The declarations under 37 CFR 1.132 filed 2/11/04 is insufficient to overcome the rejection of claims 1, 4-12, 15, 17-22, and 26-39 as set forth above because: the evidence of commercial success is not convincing, and it presents no evidence of long felt-need.

Regarding the declaration of Walter Key, there is no discussion detailing the “long-felt but unmet need” and thus presents no evidence of a long felt-need. Additionally, the declaration broadly references the furnace mounting blocks as “set forth in the Stansbury application”; however it is unclear which furnace mounting blocks are being referenced (i.e. there are two embodiments disclosed in the application). Although the declaration states that the “Furnace Mounting Block” as exhibited in Exhibit B is covered by at least claims 15-17 and 19-25, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. Additionally, there is no showing that the 50,000 blocks sold were obtained specifically from the embodiment being claimed or by way of the advantages or benefits of the recited limitations in the claims. There is no evidence which states or implies that the end users sought to buy the Furnace Mounting Blocks because the specific limitations recited in the claims provided an added benefit to the end user. Additionally, it is not clear what is meant by “no *extraordinary* efforts” were made in regards to marketing and promoting the sale of the blocks. The declaration refers only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716. The declaration further asserts that the claimed subject matter solved a problem that was long standing in the art. However, there is no showing that others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem

knew of the teachings of the above cited references; they would still be unable to solve the problem. See MPEP § 716.04.

Regarding the declaration of Phil Buehler, it is not acceptable because it does not include a statement regarding “willful and false statements”.

The additional declarations of Tim Jacobson, Dave Cournoyer, Ron Jackson, Stephen Hutcherson, John Knipe, Gene Lee, Rick Elston, Jeff Malone, and Mark Key have been reviewed. The declarations each state that the blocks purchased are “the type *generally* illustrated” in Figs. 5-10; and thus do not show that the objective evidence of nonobviousness is commensurate in scope with the claims. Additionally the declarations state that the blocks provide a solution “to the problems associated with mounting furnaces above the floor”, but do not specifically detail the ‘problems’. The declarations further state the “product” has “many” benefits associated therewith but fails to detail more than one perceived benefit (i.e. time savings). As mentioned above, the declarations fail to provide evidence which states or implies that the end users sought to buy the Furnace Mounting Blocks because the specific limitations recited in the claims provided the added benefit to the end user and further fails to show whether others of ordinary skill in the art were working on the problem and if so, for how long. In addition, there is no evidence that if persons skilled in the art who were presumably working on the problem knew of the teachings of the above cited references; they would still be unable to solve the problem. See MPEP § 716.04.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: 1179811 to Diss; 1278432 to Burns; 1278433 to Burns; 1300136 to Diss; 1420602 to Wujek; 1528261 to Noelting; D340638 to Campbell; 6405982 to Ferencz

The references cited above disclose mounts relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
3/18/04


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER